



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,654	01/22/2004	Edward Eytchison	Sony-05400	9392
28960 7590 10/16/2008 HAVERSTOCK & OWENS LLP 162 N WOLFE ROAD SUNNYVALE, CA 94086				
EXAMINER JUNG, DAVID YIUK				
ART UNIT 2434		PAPER NUMBER		
MAIL DATE 10/16/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/763,654

**Applicant(s)**

EYTCHEISON ET AL.

**Examiner**

David Y. Jung

**Art Unit**

2434

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 6/26/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **CLAIMS PRESENTED**

Claims 1-31 are presented.

### ***Response to Arguments***

Applicant's arguments filed have been fully considered but they are not persuasive.

At page 9, Applicant asserts that: "In contrast to the teachings of Darrell, Davis and their combination, the user identification system of the present invention stores one or more historic, idiosyncratic activity patterns as user action identification profiles. The method and apparatus of the present invention monitors the current user's electronic device inputs to determine the current user's idiosyncratic activity pattern. If the detected activity pattern is deemed sufficiently close to a historic, idiosyncratic activity pattern associated with a particular user, then the current user is identified as the historic, particular user. Monitored activity patterns include one or a combination of the user's selected content, the user's manner of selecting the content, the context in which the user makes certain inputs. In some instances, the module monitors the physical manner in which the user operates the electronic device. For example, two users will make keypad inputs at different speeds. In one embodiment, once the current user's identification is established, either passively by a comparator module or actively by requesting a specific user input, a password, the identification system updates the identified user's action identification profile." See Page 9 of the Remarks Section of the

Applicant's filing. Yet, there is no claim that recites all of these features. Not one claim. Despite this, Applicant argues that the references fail to teach all of these features. Thus, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (e.g., the typing at different speeds) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As for Applicant's argument (e.g., pages 10-11) regarding the "one activity performed by the particular unique user" not being taught by the prior art, Applicant has cited sections of Davis and sections of Darrell in which the particular sections, when read in isolation from other sections, do not teach the particular recitation. See pages 10-11 of Applicant's Remarks. This is, of course, logically against the very idea of an obviousness rejection; the rejection was concerned about the sections and reasonable readings of Davis and Darrell in which the claimed invention was taught. The actual rejection was not accurately addressed. The actual rejection did not deal with how to combine the portions of Davis and Darrell so as to not teach the claimed invention. While Davis and Darrell do lend themselves to many different reasonable combinations of their teachings, the actual rejection dealt with how to combine the teachings of Davis and Darrell so as to teach the claimed invention. This much is clear. Davis was cited for identifying the activity. Darrell was cited for identifying the particular unique user.

The combination of the teachings teach the "one activity performed by the particular unique user."

Applicant may have interpreted the rejection to have dealt with a physical combination of Davis and Darrell (as would be reasonable for mechanical objects). The rejection did not deal with any direct combination of the devices. Instead, the teachings of Davis and the teachings of Darrell were to be combined. In any case, any record of misunderstandings and mistaken readings of file history (e.g., regarding rejections in Office Actions) should be pointed out and corrected.

Therefore, Applicant is respectfully requested to submit further arguments or amendments or other appropriate responses.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Regarding all presented claims, the relied references are as noted in the previous Office Action. Please see the previous Office Action for detailed citation.

Claims 1-21, 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darrell and Davis.

Regarding claim 1, Davis teaches "A method of identifying a user comprising: detecting a user's electronic device activity pattern; comparing the detected activity pattern against a plurality of user action identification profiles stored in a memory\_ device, wherein each user action identification profile is associated with a [ ] unique [ ] by at least one activity performed by the particular unique user; and using the comparing [ ] (section 3 Application Space, e.g., credit card fraud detection which identifies patterns of credit card use)."

These passages of Davis do not teach "particular ... user" and "to identify the current user as being one of the particular users" in the sense of the claim.

Darrell teaches "particular ... user" and "to identify the current user as being one of the particular users (Figure 1, i.e., tracking and identification)" for the motivation of better tracking persons (section 1 Introduction, i.e., locate and track user).

Hence, it would have been obvious to those of ordinary skill in the art at the time of the claimed invention to combine the teachings of Darrell and Davis for the motivation noted in the previous paragraphs so as to teach the claimed invention.

Claims 1, 10, 11, 21, 27 are independent claims.

The special features of claim 10 (detection etc.), claim 11 (system etc.), claim 21 (storing the activity pattern etc.), claim 27 (identification system with modules etc.) are taught by Darrell (section 4 Integrated Tracking, especially the second paragraph concerning collecting data and detection).

Regarding claims 2, 5-9, 12, 15-19, 25, 28, 29, 31 (various user identifying), these features are taught by Darrell (section 4 Integrated Tracking, especially the second paragraph concerning collecting data and detection)

Regarding claims 3, 4, 13, 14, 20, 26, 30 (various scoring as to whether matches are reasonable), these features are taught by Davis (section 3. Application Space, e.g., credit card fraud detection which identifies patterns of credit card use)."

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darrell and Davis and Seno.

Claims 22-24 depend from claim 21. Darrell and Davis teach as noted in the rejection of claim 21.

Thus, Darrell and Davis teach all but the special features of claims 22-24 (biometric features and password, etc.).

The special features of claims 22-24 (biometric features and password, etc.) are taught by Seno (section I. Introduction, i.e., finger print, iris, passwords, etc.) for the motivation of user authentication ((section I. Introduction).

Hence, it would have been obvious to those of ordinary skill in the art at the time of the claimed invention to combine the teachings of Darrell and Davis and Seno for the motivation noted in the previous paragraphs so as to teach the claimed invention.

### ***Conclusion***

The art made of record and not relied upon is considered pertinent to applicant's disclosure. The art disclosed general background.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Points of Contact***

**Any response to this action should be mailed to:**

Commissioner for Patents  
Alexandria, VA 22313

**or faxed to:**



Art Unit: 2434

(571) 273-8300, (for formal communications intended for entry)

**Or:**

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Kambiz Zand whose telephone number is (571) 272-3811.

/David Y Jung/

Acting Examiner of Art Unit 2134

David Jung

David Jung

-----

Patent Examiner

10/16/08

Application/Control Number: 10/763,654  
Art Unit: 2434

Page 9